Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Implementation of Infrastructure	)	**CC Docket No. 96-237**
Sharing Provisions in the	)	
Telecommunications Act of 1996	)	
	)	

PETITION FOR RECONSIDERATION

MCI Telecommunications Corporation ("MCI"), pursuant to Section 1.429 of the Commission's rules, submits the following petition for reconsideration in the above-captioned proceeding.

In its Infrastructure Sharing Order,[1] the Commission reserves, but declines to exercise, authority to establish pricing guidelines to ensure that a qualifying carrier (QLEC) fully benefits from the economies of scale and scope of a providing local

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[1] *In the Matter of Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, CC Docket 96-237, FCC No. 96-456, released November 22, 1996 (Infrastructure Sharing Order).

exchange carrier (PLEC). The Commission reasons that

> "...it is not necessary at this time for the Commission to adopt pricing regulations because we believe that the negotiation process, along with the dispute resolution, arbitration, and complaint processes will ensure that qualifying carriers fully benefit from the economies of scale and scope of providing incumbent LECs.[2]

I. Negotiated Outcomes Do Not Fulfill Congressional Intent

MCI requests the Commission reconsider its decision to abstain from exercising its pricing authority in this case. The Commission believes negotiation without standards or conditions will result in parties fulfilling the goals of Section 259 of the 1996 Act. MCI agrees that negotiation may, under certain conditions, fulfill some of Congress' goals stated in Section 259 of the 1996 Act,[3] but will not do so with regard to Section 259(b)(4).

Congress established an explicit standard the Commission must employ when implementing its Section 259 rules. Congress stated that the Commission

> "...shall ...ensure that such local exchange carrier makes such infrastructure, technology, information, facilities, or functions available to a qualifying carrier on just and reasonable terms and conditions that permit such qualifying carrier to fully benefit from the economies of scale and scope of such local exchange carrier..."

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2 Infrastructure Sharing Order at para. 116.

3 "By granting qualifying Section 259 carriers the advantage of negotiating terms more favorable than what they would get under Section 251, the Commission would be spared the task of explicitly determining the extent of additional or superior access to infrastructure, information, facilities, and services that should be made available to Section 259 carriers." MCI Comments, *In the Matter of Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, CC Docket 96-237, FCC at 5.

Congress was quite clear that the QLEC should *fully benefit* from economies of scale and scope. That means that PLECs should *not* benefit from economies of scale and scope in its relation with the QLEC.[4] Congress did not say the Commission should implement rules that permitted QLECs to *share* the benefits of the PLEC's economies of scale and scope, yet that is precisely the manner in which the Commission has implemented Section 259(b)(4).

> "We conclude that, because section 259 requires that a qualifying carrier not use infrastructure obtained pursuant to a section 259 agreement to compete with the providing incumbent LEC, and as stated above, a providing incumbent LEC may recover all the costs it incurs as a result of providing shared infrastructure pursuant to a section 259 agreement, *parties will be able to negotiate agreements beneficial to both,* in accordance with the goals of section 259."[5] (emphasis added)

Negotiation does indeed involve sharing the benefits of economies of scale and scope, but because that is the case, and contrary to the Commission's assertion above, a negotiated outcome will directly contravene Section 259(b)(4) of the 1996 Act. QLECs simply do not have benefits they may confer on PLECs equal or symmetric to the extent of the PLECs economies of scale and scope. Consequently, unconditional negotiation will not permit QLECs to receive all of their Congressionally-mandated benefits. The Commission must ensure this outcome through explicit pricing rules.

II. The Commission Must Set Prices Equal to Incremental Cost

The Commission is clearly required to exercise its pricing authority in order to

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[4] This condition applies only to the incumbent's relation with QLECs under Section 259.

[5] Ibid.

fulfill its duties under Section 259(b)(4) of the 1996 Act. It may not rely on negotiated agreements. The question arises then, what prices should it set? Congress has not given the Commission flexibility on this issue. The Commission must establish prices that permit it to simultaneously comply with Section 259(b)(1) and Section 259(b)(4) of the 1996 Act.

The Commission has interpreted Section 259(b)(1) as ensuring the "...providing incumbent LEC does not incur costs that it cannot recover."[6] The Commission must also implement rules that satisfy Section 259(b)(4) of the 1996 Act, that permit QLECs to fully benefit from the PLECs' economies of scope.

The only price that fulfills both these conditions in the presence of economies of scale and scope is incremental cost, exclusive of joint and common costs. Economies of scope arise when it is cheaper to provide two or more services over shared facilities, than to provide them over separate facilities. In the absence of economies of scale, the PLEC would be fully compensated if prices were set at marginal cost. Where PLECs enjoy both economies of scale and scope, they will be fully compensated for facilities used in common if price is set at the incremental cost of production.

> "If there are economies of scale in the sense that average-incremental cost falls lower and lower the larger the volume of output, then marginal cost must be below average-incremental cost, so that the latter must constitute the effective floor on prices."[7]

Setting PLEC prices at incremental cost is also the price at which the QLEC will

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6 Infrastructure Sharing Order at para. 95.

7 William J. Baumol and J. Gregory Sidak, *Towards Competition in Local Telephony*, American Enterprise Institute, 1994 at 67.

receive the full benefits of economies of scope, since it will not contribute to common cost recovery. The Commission has consistently concluded that where economies of scope exist, customers of the service in question will share these scope economies if prices are above incremental cost, or if common costs are shared among the services in question.

> "...our rules will intentionally allocate a significant part of common costs to nonregulated services. That is appropriate because we believe that telephone ratepayers are entitled to at least some of the benefit of the economy of scope between telephony and competitive services."[8]

> "We believe, for example, that a policy that would permit BOCs to allocate all common costs of shared facilities to regulated services would pose a risk that subscribers to the BOCs' regulated telecommunications services would pay more than the stand-alone costs of the services they receive, and would thus be subsidizing the BOCs' competitive activities rather than sharing in the economies of scope..."[9]

However, since 259(b)(4) requires QLECs to fully benefit from these economies, PLECs may not benefit from these economies in the prices they charge to QLECs, and thus, may not require PLECs to contribute to common cost recovery. Consequently, setting prices of infrastructure sharing arrangements at incremental cost is the only way the Commission can comply with both Sections 259(b)(1) and 259(b)(4) of the 1996 Act.

For the above-stated reasons, MCI respectfully requests the Commission to

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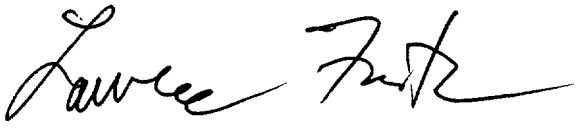
8 *In the Matter of Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services*, CC Docket No. 96-112, 11 FCC Rcd 6700 at 19.

9 In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, 11 FCC Rcd 9054 at 8.

exercise its pricing authority, and require PLECs to provide infrastructure sharing to QLECs at prices no greater than average incremental cost, exclusive of joint and common costs. The Commission should require PLECs to file incremental cost studies utilizing the methodology described in the Commission's Interconnection Order for the facilities and services requested by QLECs, and set prices at these costs.[10]

Respectfully submitted,
MCI TELECOMMUNICATIONS CORPORATION



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April 3, 1997

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[10] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (Interconnection Order), CC Docket No. 96-98, August 8, 1996, at para 675.

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on April 3, 1997.

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CERTIFICATE OF SERVICE

I, Barbara Nowlin, do hereby certify that a copy of the foregoing **Petition for Reconsideration** has been sent by United States first class mail, postage prepaid, hand delivery, to the following parties on this 3rd day of April, 1997.

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